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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

4 v.

17 CR 390 (ALC)

5 DON CARIM,

6 Defendant.

7 -----x

8 New York, N.Y.  
9 October 29, 2018  
1:15 p.m.

10 Before:

11 HON. SARAH NETBURN,

12 Magistrate Judge

13  
14 APPEARANCES

15 GEOFFREY S. BERMAN

16 United States Attorney for the  
17 Southern District of New York

NICOLAS ROOS

17 Assistant United States Attorney

18 GUY OKSENHENDLER

19 Attorney for Defendant

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1 THE DEPUTY CLERK: United States v. Don Carim.  
2 Counsel, please state your appearance for the record.

3 MR. ROOS: Good afternoon. Nicolas Roos for the  
4 United States.

5 THE COURT: Thank you.

6 MR. OKSENHENDLER: Good afternoon, your Honor. Guy  
7 Oksenhendler for Mr. Carim.

8 THE COURT: Thank you. And good afternoon, Mr. Carim.  
9 You may be seated.

10 My name is Judge Netburn.

11 Sir, I have before me a consent to proceed before a  
12 United States magistrate judge on a felony plea allocution that  
13 you have signed. What this form says is that, knowing you have  
14 the right to have this plea taken by a United States district  
15 judge, you are agreeing to have this plea taken by me, a United  
16 States magistrate judge.

17 Is that correct?

18 THE DEFENDANT: Yes, ma'am.

19 THE COURT: Before you signed this form, did your  
20 lawyer explain it to you?

21 THE DEFENDANT: Yes, ma'am.

22 THE COURT: It is accepted.

23 MR. OKSENHENDLER: Thank you, Judge.

24 THE COURT: Sir, you've been charged in a one-count  
25 indictment. Count One charges you with conspiracy to

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1 distribute and possess with intent to distribute oxycodone,  
2 from in or about January 2012 until in or about June 2017 in  
3 violation of Title 21 of the United States Code, Section  
4 841(b)(1)(C).

5 That count is brought under Title 21 of the United  
6 States Code, Section 846.

7 I've been informed that you wish to change your plea  
8 and enter a plea of guilty pursuant to that charge. Is that  
9 correct?

10 THE DEFENDANT: Yes, ma'am.

11 THE COURT: Before deciding whether to accept your  
12 guilty plea, I am going to ask you certain questions. It is  
13 very important that you answer these questions honestly and  
14 completely. The purpose of these proceedings is to make sure  
15 you understand your rights, to decide whether you are pleading  
16 guilty of your own free will, and to make sure that you are  
17 pleading guilty because you are guilty and not for some other  
18 reason.

19 Do you understand what I am saying?

20 THE DEFENDANT: Yes, ma'am.

21 THE COURT: If at any point in time you don't  
22 understand my questions or you want an opportunity to speak  
23 with your lawyer, please say so, because it's important that  
24 you understand every question before you answer. Will you do  
25 that?

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1 THE DEFENDANT: Yes, ma'am.

2 THE COURT: Ms. Fletcher, will you swear in the  
3 defendant, please.

4 THE DEPUTY CLERK: Please stand and raise your right  
5 hand.

6 (Defendant sworn)

7 THE DEPUTY CLERK: Please state your name for the  
8 record.

9 THE DEFENDANT: Don Michael Carim, Jr.

10 THE COURT: How old are you?

11 THE DEFENDANT: 34.

12 THE COURT: Are you a United States citizen?

13 THE DEFENDANT: Yes, ma'am.

14 THE COURT: The reason I ask if you are a United  
15 States citizen is because if you were found to be a  
16 non-citizen, your conviction might have consequences for your  
17 ability to remain in the United States. For example, if you  
18 were found to be a non-citizen, you could be removed from the  
19 United States, denied citizenship or denied admission to the  
20 United States in the future, and you would be bound by your  
21 guilty plea regardless of those immigration consequences.

22 Sir, how far did you go in school?

23 THE DEFENDANT: I'm currently enrolled in nursing  
24 school.

25 THE COURT: Wonderful. So does that mean that you

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1 have an associate's degree already?

2 THE DEFENDANT: When I complete the program, I'll  
3 receive my associate's.

4 THE COURT: When do you think you'll complete the  
5 program?

6 THE DEFENDANT: It would have been two more semesters.

7 THE COURT: It would have been?

8 THE DEFENDANT: Two more semesters.

9 THE COURT: And now you're not sure what the status  
10 is?

11 It depends on your future?

12 MR. OKSENHENDLER: Yes.

13 THE DEFENDANT: Accepting this charge bars me.

14 THE COURT: This charge would bar you from proceeding?

15 THE DEFENDANT: Yes.

16 THE COURT: How many credits do you have towards that  
17 degree?

18 THE DEFENDANT: I have a little over 60 credits. I  
19 have enough for an associate's, but the program was put  
20 together, so if I went and declared a major somewhere else, I  
21 probably could get my associate's. But the program, the way it  
22 works, is not all of my credits count towards it. So I'll  
23 graduate with an associate's if I finish.

24 THE COURT: Okay. Well, I encourage you to take  
25 whatever steps you can to obtain your degree, whether it is in

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1 a nursing program or some other program. It sounds like you  
2 committed and invested a lot of your time and energy in  
3 furthering your education, which is really important. And if  
4 you have as many credits as you tell me you do, hopefully  
5 you'll be able to obtain an associate's degree in another field  
6 that interests you, if you are not able to pursue the nursing  
7 field.

8 THE DEFENDANT: Thank you, ma'am.

9 THE COURT: Are you currently or have you recently  
10 been under the care of a doctor or a psychiatrist for any  
11 reason?

12 THE DEFENDANT: Yes, ma'am.

13 THE COURT: Medical doctor or psychiatrist?

14 THE DEFENDANT: VA psychologist.

15 THE COURT: I'm not going to ask you too many  
16 questions about your course of treatment, but are you seeing --  
17 you said it was a psychologist?

18 THE DEFENDANT: Yes, ma'am.

19 THE COURT: Are you seeing that psychologist for  
20 reasons that affect your ability to understand what's going on  
21 in these proceedings?

22 THE DEFENDANT: No, ma'am. For PTSD from the  
23 military.

24 THE COURT: Okay. Thank you for your service.

25 Do you take any medication that affects your ability

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1 to understand what's going on in these proceedings?

2 THE DEFENDANT: Not currently; no, ma'am.

3 THE COURT: Is your mind clear right now?

4 THE DEFENDANT: Yes, ma'am.

5 THE COURT: Do you understand what's going on in these  
6 proceedings?

7 THE DEFENDANT: Yes, ma'am.

8 THE COURT: Do you take any medication now or have you  
9 that affects your ability to answer questions truthfully?

10 THE DEFENDANT: No, your Honor.

11 THE COURT: No? Okay. Have you taken any  
12 mind-altering drugs or medicine or consumed any alcohol in the  
13 last 24 hours?

14 THE DEFENDANT: No, your Honor.

15 THE COURT: Does either counsel have any objection to  
16 the defendant's competence to enter a guilty plea at this time?

17 MR. ROOS: No, your Honor.

18 MR. OKSENHENDLER: No, your Honor.

19 THE COURT: Sir, have you received a copy of the  
20 written version of the charge against you in this case known as  
21 the indictment?

22 THE DEFENDANT: Yes, your Honor.

23 THE COURT: Have you read it?

24 THE DEFENDANT: Yes, ma'am.

25 THE COURT: Do you understand what it says?

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1 THE DEFENDANT: Yes, ma'am.

2 THE COURT: You understand you've been charged  
3 generally with participating in a narcotics conspiracy?

4 THE DEFENDANT: Yes, ma'am.

5 THE COURT: Have you had time to talk to your attorney  
6 about these charges and about how you wish to plead?

7 THE DEFENDANT: Yes, ma'am.

8 THE COURT: Has he told you the consequences of  
9 pleading guilty?

10 THE DEFENDANT: Yes, ma'am.

11 THE COURT: Are you satisfied with your attorney's  
12 representation of you?

13 THE DEFENDANT: Yes, ma'am.

14 THE COURT: Sir, I am now going to explain certain  
15 Constitutional rights that you have. These are rights you'll  
16 be giving up if you enter a guilty plea.

17 Please listen carefully to what I'm about to say. If  
18 you don't understand something, please stop me, and your  
19 attorney or I will explain the matter more fully. Okay?

20 THE DEFENDANT: Yes, ma'am.

21 THE COURT: Under the Constitution and the laws of the  
22 United States, you have a right to plead not guilty to the  
23 charges contained in this indictment.

24 Do you understand that?

25 THE DEFENDANT: Yes, ma'am.



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1           THE COURT: If you pled not guilty, you would be  
2 entitled under the Constitution to a speedy and public trial by  
3 a jury of that charge. At that trial, you would be presumed  
4 innocent, and the government would be required to prove you  
5 guilty beyond a reasonable doubt before you could be found  
6 guilty. That means you would not have to prove that you were  
7 innocent, and you would not be convicted unless a jury of 12  
8 people agreed unanimously that you were guilty beyond a  
9 reasonable doubt.

10           Do you understand that?

11           THE DEFENDANT: Yes, ma'am.

12           THE COURT: If you decide to go to trial, at that  
13 trial and at every stage of your case, you would have the right  
14 to be represented by an attorney. If you cannot afford an  
15 attorney, one would be presented to represent you at the  
16 government's expense and at no cost to you. If you have  
17 retained counsel and ran out of money, the government would  
18 appoint an attorney to continue to represent you.

19           If an attorney is appointed, that attorney is  
20 appointed to handle your case all way through trial, and not  
21 just for a guilty plea. So your decision to plead guilty here  
22 today should not depend on whether you can afford to hire an  
23 attorney.

24           Do you understand that?

25           THE DEFENDANT: Yes, ma'am.

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1           THE COURT: During a trial, the witnesses for the  
2 prosecution would have to come to court and testify in your  
3 presence where you could see and hear them, and your lawyer  
4 could cross-examine those witnesses. If you wanted, your  
5 lawyer could offer evidence on your behalf. You would be able  
6 to use the Court's power to compel witnesses to come to court  
7 and testify in your presence where you could see and hear them,  
8 and your lawyer could cross-examine them.

9           Do you understand that?

10          THE DEFENDANT: Yes, ma'am.

11          THE COURT: At a trial, you would have the right to  
12 testify if in your own defense if you wanted to, but you would  
13 also have the right not to testify. If you chose not to  
14 testify, that could not be used against you in any way. No  
15 inference or suggestion of guilt could be made from the fact  
16 that you did not testify.

17          Do you understand that?

18          THE DEFENDANT: Yes, ma'am.

19          THE COURT: If you were convicted at a trial, you  
20 would have the right to appeal that verdict to a higher court.

21          Do you understand that?

22          THE DEFENDANT: Yes, ma'am.

23          THE COURT: As I said before, you have the right to  
24 plead not guilty. Even right now, even as you sit here today  
25 for the purposes of entering a guilty plea, you have the right

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1 to change your mind, persist in your not guilty plea, and  
2 proceed to trial.

3 But if you do plead guilty, and I accept your plea,  
4 you will give up a trial and all of the other rights that I  
5 have just described. If you plead guilty, there will be no  
6 trial. All that will remain to be done will be to impose a  
7 sentence. You and the government will have an opportunity to  
8 make arguments about what that sentence should be, but there  
9 will not be any further trial to determine whether you are  
10 guilty or not guilty of the charges to which you pled guilty.

11 Do you understand that?

12 THE DEFENDANT: Yes, ma'am.

13 THE COURT: Do you understand that the decision as to  
14 the appropriate sentence in your case will be entirely up to  
15 the sentencing judge, and that that judge will be limited only  
16 by what the law requires? This means that even if you are  
17 surprised or disappointed by your sentence, you will still be  
18 bound by your guilty plea.

19 Do you understand that?

20 THE DEFENDANT: Yes, ma'am.

21 THE COURT: Finally, if you do plead guilty, you are  
22 also giving up your right not to incriminate yourself, and I  
23 will ask you questions about what you did in order to satisfy  
24 myself that you are actually guilty.

25 By pleading guilty, you are admitting to your factual

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1 as well as your legal guilt. Do you understand that?

2 THE DEFENDANT: Yes, ma'am.

3 THE COURT: You said earlier that you have read the  
4 indictment containing the narcotics conspiracy charge against  
5 you. What I'm now going to do is ask the assistant United  
6 States attorney to state the elements of that charge. The  
7 elements are the things that the government would have to prove  
8 beyond a reasonable doubt if the case were to proceed to trial.  
9 Please.

10 MR. ROOS: Thank you, your Honor. The elements of the  
11 charged offense in the indictment are: First, the existence of  
12 a conspiracy, the object of which was the unlawful distribution  
13 of a controlled substance, here, oxycodone. Second that the  
14 there was interdependence amongst the members of the  
15 conspiracy. Third, that the conspiracy did in fact involve  
16 oxycodone, a controlled substance. And fourth, that the  
17 defendant knowingly and intentionally involved himself or  
18 became a member of the conspiracy.

19 THE COURT: Thank you.

20 MR. ROOS: Also the government would have to prove by  
21 a preponderance that venue is proper in the Southern District.

22 THE COURT: Thank you.

23 Sir, I'm now going to tell you the maximum possible  
24 penalty for this crime. The maximum means the most that could  
25 possibly be imposed. It does not necessarily mean this is what

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1 you will receive. But you have to understand that by pleading  
2 guilty here today, you are exposing yourself to any combination  
3 of punishments up to the maximum that I'm about to describe.

4 Do you understand all that?

5 THE DEFENDANT: Yes, ma'am.

6 THE COURT: Count One carries a maximum term of  
7 imprisonment of 20 years, and there is a maximum term of  
8 supervised release of life, and a mandatory minimum term of  
9 supervised release of three years.

10 Supervised release means that if you are sentenced to  
11 prison, and thereafter released from prison, you may be subject  
12 to supervision by the probation department. You should  
13 understand that if you are placed on supervised release and  
14 then violate any of the terms or conditions of that release,  
15 the district judge that sentences you may revoke the term of  
16 supervised release, and return you to prison without giving you  
17 any credit for the time you spent on supervised release.

18 Do you understand that?

19 THE DEFENDANT: Yes, ma'am.

20 THE COURT: Second, in addition to these restrictions  
21 on your liberty, the maximum possible punishment also includes  
22 certain financial penalties. In this case the maximum  
23 allowable fine is the greatest of \$1 million or twice what was  
24 made by the criminal activity or twice what someone other than  
25 yourself lost because of the criminal activity. In addition,

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1 there is a mandatory special assessment of \$100 that must be  
2 imposed for the count of conviction.

3 Sir, has anyone threatened you or coerced you in any  
4 way to get you to plead guilty?

5 THE DEFENDANT: No, ma'am.

6 THE COURT: Has anyone, other than the prosecution by  
7 way of this written agreement, promised you or offered you  
8 anything to get you to plead guilty?

9 THE DEFENDANT: No, ma'am.

10 THE COURT: As I just referenced, there is an  
11 agreement between you and government concerning this plea. Is  
12 that correct?

13 THE DEFENDANT: Yes, ma'am.

14 THE COURT: Have you read this agreement?

15 THE DEFENDANT: Yes, ma'am.

16 THE COURT: Have you had an opportunity to discuss its  
17 terms with your lawyer?

18 THE DEFENDANT: Yes, ma'am.

19 THE COURT: I see that you signed the agreement. Did  
20 you speak with your lawyer before signing this agreement and  
21 understand it before you signed it?

22 THE DEFENDANT: Yes, ma'am.

23 THE COURT: It appears that you and the government  
24 have agreed as to the appropriate sentencing calculation under  
25 the sentencing guidelines. Is that correct?

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1 THE DEFENDANT: Yes, ma'am.

2 THE COURT: You've agreed that the appropriate  
3 guidelines range is between 46 and 57 months' imprisonment. Is  
4 that correct?

5 THE DEFENDANT: Yes, ma'am.

6 THE COURT: In addition, you and the government have  
7 agreed that the appropriate fine range is between \$10,000 and  
8 \$1 million. Is that correct?

9 THE DEFENDANT: Yes, ma'am.

10 THE COURT: In this agreement, you've agreed that  
11 neither you nor the government will seek any departure or  
12 adjustment pursuant to the guidelines that's not set forth in  
13 this agreement. Do you understand that?

14 THE DEFENDANT: Yes, ma'am.

15 THE COURT: However, it's allowed under this agreement  
16 you may seek a sentence that is outside of the stipulated  
17 guidelines range, based on the factors that are set forth in  
18 our sentencing statute which you can find at Title 18, United  
19 States Code, Section 3553(a). Do you understand that?

20 THE DEFENDANT: Yes, ma'am.

21 THE COURT: In this agreement, you are admitting to  
22 the forfeiture allegation with respect to Count One of the  
23 indictment. You have agreed to forfeit to the United States  
24 \$24,750.

25 Do you understand that?

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1 THE DEFENDANT: Yes, ma'am.

2 THE COURT: In addition, in this agreement you have  
3 limited in certain respects your ability to appeal from your  
4 conviction and sentence. Specifically, you've agreed you will  
5 not file a direct appeal or bring a collateral challenge,  
6 sometimes called a habeas motion, or seek a sentence  
7 modification, so long as your sentence is within or below the  
8 stipulated guidelines range of 46 to 57 months' imprisonment.

9 Do you understand that?

10 THE DEFENDANT: Yes, ma'am.

11 THE COURT: You've also agreed you will not appeal any  
12 term of supervised release that is less than or equal to the  
13 statutory maximum of life. And that you will not appeal any  
14 fine that is less than or equal to \$1 million.

15 Do you understand that?

16 THE DEFENDANT: Yes, ma'am.

17 THE COURT: The most important thing for you to  
18 understand is this agreement is not binding on the sentencing  
19 judge. And that the judge may reject the calculations and  
20 recommendations that are set forth in this plea agreement,  
21 without permitting you to withdraw your guilty plea, and then  
22 could impose a more severe punishment.

23 Do you understand that?

24 THE DEFENDANT: Yes, ma'am.

25 THE COURT: The sentencing judge is required to make



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1 his own independent calculation under the sentencing  
2 guidelines, and to impose a sentence based on what he believes  
3 is correct.

4 Do you understand that?

5 THE DEFENDANT: Yes, ma'am.

6 THE COURT: In determining that sentence, the Court  
7 will consider, in addition to the guidelines and any departures  
8 from those guidelines, all of the factors that are set forth in  
9 the sentencing statute which, I just mentioned to you, you can  
10 find at Title 18 of the United States Code, Section 3553(a).  
11 Those factors include the nature and circumstances of the  
12 offense, and the history and characteristics of you, the  
13 defendant, the need for the sentence imposed, the kinds of  
14 sentences that are available, the sentencing range provided  
15 under the guidelines, the need to avoid sentencing disparities,  
16 and the need to provide restitution to victims.

17 In addition, the Court will consider the presentence  
18 report, which is prepared by the probation department in  
19 advance of your sentencing. Before you are sentenced, you and  
20 the government will be given an opportunity to challenge the  
21 facts that are reported by the probation officer.

22 Sir, now that you've been advised of the charge  
23 against you and the possible penalties you face, is it still  
24 your intention to plead guilty to Count One of the indictment?

25 THE DEFENDANT: Yes, ma'am.

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1 THE COURT: With respect to Count One of the  
2 indictment, how do you plead?

3 THE DEFENDANT: Guilty.

4 THE COURT: Can you tell me in your own words what you  
5 did to make you believe you're guilty of that charge.

6 THE DEFENDANT: Between January 2012 and June 2017, I  
7 agreed with other people to possess with intent to distribute  
8 oxycodone. At the time of my actions, I knew they were wrong  
9 and illegal.

10 MR. OKSENHENDLER: Judge, with regard to venue, the  
11 actions that my client undertook to participate in the  
12 conspiracy, after reviewing the discovery that's been provided  
13 by the government, occurred in Staten Island. But in reviewing  
14 other discovery provided by the government, I believe that  
15 there were actions that were taken here in Manhattan, which  
16 would make venue in this district appropriate in the case.

17 THE COURT: Okay. And is your client expressly  
18 waiving any possible venue challenge?

19 MR. OKSENHENDLER: Yes.

20 THE COURT: Thank you. Do you believe that is a  
21 sufficient allocution?

22 MR. ROOS: Yes, your Honor.

23 THE COURT: Would you like me to ask the defendant any  
24 other questions?

25 MR. ROOS: No, your Honor.

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1 THE COURT: Does the government want to represent the  
2 evidence it would put forth at trial.

3 MR. ROOS: Certainly, your Honor. Briefly, the  
4 government's evidence at trial would include cooperating  
5 witness testimony, actual prescriptions and prescription  
6 monitoring program data, certain surveillance photographs and  
7 recordings.

8 And to the venue point, as defense counsel correctly  
9 pointed out, the government would prove that venue for the  
10 conspiracy charge is based on the filling of prescriptions,  
11 among other things, in the Southern District of New York.

12 THE COURT: Thank you.

13 Sir, on the basis of your responses to my questions  
14 and my observation of your demeanor, I find that you are  
15 competent to enter a guilty plea. I'm satisfied that you  
16 understand your rights, including your right to go to trial;  
17 that you are aware of the consequences of your plea, including  
18 the sentence that may be imposed; that you are voluntarily  
19 pleading guilty; and that you've admitted you are guilty as  
20 charged in Count One of the indictment.

21 For these reasons, I'll recommend to District Judge  
22 Carter that he accept your plea of guilty as to Count One of  
23 the indictment.

24 I'll direct the government to order a copy of the  
25 transcript and submit it to Judge Carter so he may act on my

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1 recommendation.

2 Has he set a sentencing date yet?

3 MR. ROOS: No, your Honor.

4 THE COURT: Would you like me to set a four-month out  
5 control date?

6 MR. ROOS: Please.

7 THE COURT: I'll set a control date for February 28.  
8 I'll direct that the presentence report be prepared.

9 Can you deliver a case summary to probation within 14  
10 days?

11 MR. ROOS: Yes, your Honor.

12 THE COURT: Counsel, can you and your client be  
13 available in the next 14 days to be interviewed by probation?

14 MR. OKSENHENDLER: Of course, your Honor. I will, and  
15 I will reach out to probation to set up the interview.

16 THE COURT: Thank you. Any objections to continuing  
17 the present bail?

18 MR. ROOS: No.

19 THE COURT: Sir, let me remind you that all of the  
20 conditions on which you were released up until now continue to  
21 apply. A violation of those conditions can have very serious  
22 consequences, including revocation of bail and prosecution for  
23 bail jumping.

24 In addition, if you violate any of the terms of your  
25 plea agreement, you may be subject to revocation of that

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1 agreement with all of the consequences that are set forth.

2 Any further matters for either side?

3 MR. ROOS: No, your Honor.

4 MR. OKSENHENDLER: No, your Honor.

5 THE COURT: Thank you.

6 (Adjourned)